

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	
)	4:03CR3035
Plaintiff,)	
)	
V.)	
)	MEMORANDUM
ALFONZO CARRILLO)	AND ORDER
)	
Defendant.)	

This matter is before the court on the defendant's notice of appeal ([filing 59](#)) from the court's memorandum and order denying his 18 U.S.C. § 3582 sentence-reduction motion ([filing 58](#)) and on the clerk's memorandum ([filing 60](#)) regarding such filing.

Pursuant to Fed. R. App. P. 4(b)(1)(A)(i), the defendant had 10 days after entry of judgment to file a notice of appeal. See United States v. Petty, 82 F.3d 809, 810 (8th Cir. 1996) (per curiam) (time limits for appealing in criminal cases apply to appeal from denial of § 3582(c)(2) motion). Judgment was entered on August 29, 2008 ([filing 58](#)). See Fed. R. App. P. 4(b)(6). The 10-day appeal period excludes intermediate Saturdays, Sundays, and legal holidays. See Fed. R. App. P. 26(a). The defendant's appeal deadline therefore was September 15, 2008. The defendant's notice of appeal was not received or docketed by the clerk until October 20, 2008 ([filing 59](#)).

Giving the defendant the benefit of the "prison mailbox rule," his notice of appeal appears to fall within the thirty-day extension period authorized by Fed. R. App. P. 4(b)(4) ([filing 59](#)). However, the defendant's filing does not request an extension under Fed. R. App. P. 4(b)(4) ([filing 59](#)). Even construing the defendant's notice of appeal as such a request, there is no showing of excusable neglect which would permit the court to grant such an extension under Fed. R. App. P. 4(b)(4). See

United States v. Anna, 843 F.2d 1146, 1147 (8th Cir.1988). The defendant's notice of appeal therefore will be denied as untimely.¹

IT IS ORDERED:

1. The defendant's notice of appeal ([filing 59](#)) is denied.
2. The clerk of the court shall not process an appeal to the United States Court of Appeals for the Eighth Circuit on the basis of the aforesaid filing by the defendant.
3. The defendant is not permitted to proceed in forma pauperis on appeal.
4. The clerk of the court shall forward a copy of this memorandum and order, together with copies of filings [58](#) and [59](#), to the Clerk of the United States Court of Appeals for the Eighth Circuit.

November 13, 2008.

BY THE COURT:
s/ Richard G. Kopf
United States District Judge

¹ The defendant's notice of appeal was not accompanied by a motion to proceed in forma pauperis on appeal. To the extent that the defendant is making such a request, it is denied.